IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 11 OF 2006

Shri Avelino J. Pinto,
Mapusa. ... Petitioner

versus

Shri Ramesh Shrikrishna
Chari, Mapusa-Goa and
another. ... Respondents

Mr. S. Vales, Advocate for the Petitioner.

Ms. W. Coutinho, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 28TH JUNE,2006.

P.C.:-

Heard Mr. S. Vales, the learned Counsel on behalf of the petitioner/accused who has invoked the extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 to set aside the Order dated 16-11-2005 of the learned Sessions Judge, Panaji.

2. The respondent no.1/complainant has chosen to remain absent before this Court inspite of the fact that he was duly served.

3. The complaint was filed by respondent no.1 who was the Attorney of Lawrence Correia with the allegation that the accused sold a plot admeasuring 603 sq. meters representing it to admeasure 760 sq. meters for a consideration of Rs.1.50 lakhs. After the said Attorney was examined as complainant and his principal namely the said Lawrence Correia was also examined, process came to be issued against the accused under Section 420 I.P.C. by Order dated 18-8-2003. Subsequently, the said Order came to be recalled by the learned J.M.F.C. by Order dated 2-8-2004 and the complainant having preferred a revision against the said Order, the learned Sessions Judge set aside the same and ordered that the learned J.M.F.C. should proceed with the trial in accordance with law. In setting aside the said Order, the learned Sessions Judge observed that the learned J.M.F.C. was not justified in recalling the process as the material on record prima facie indicated that the plot sold to the complainant was admeasuring 760 sq. meters whereas its actual

area was 630 sq. meters and that the complainant had stated that the accused who was an Engineer by profession was well aware that the area of the plot sold to him by the accused was not 760 sq. meters and had intentionally misrepresented to him that the area of the plot sold was 760 sq. meters and thereby had deceived and induced him to pay an amount of Rs.1.5 lakhs.

4. The Sale Deed produced on record shows that the accused was acting as an Attorney of the vendor Kum. Medha Silim Khan as well as the Attorney of the confirming parties, namely one Charles Maximo Pinto and Smt. Maria Diodita Muriel Fernandes alias Muriel Pinto and otherwise was also a Civil Engineer. The grievance made on behalf of the accused is that the complaint is not filed by the purchaser namely the said Lawrence Correia. Another grievance made is that it is not the case of the said Lawrence Correia that he was deceived by the accused. It is well settled that anyone can set the criminal law in motion and although the complaint was filed by the Power of Attorney of the purchaser, the purchaser was also examined before issuing process against the accused. The allegation made against the accused prima facie shows that the accused as an

Attorney of the vendor as well as the said confirming parties and besides being an Engineer represented to the complainant that the said plot was 760 sq. meters when it was not and sold it for the said price of Rs.1.50 lakhs. Based on the said allegation which was prima facie substantiated that the process was issued. The learned Sessions Judge was fully justified in interfering with the order recalling process. The allegation need to be tested at the trial. For the present, I need only observe that the accused has not made out any case for inference in the extraordinary jurisdiction against the said Order of the learned Sessions Judge dated 16-11-2005. Consequently the petition is dismissed.

N. A. BRITTO, J.

RD